IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.250 OF 1998
IN
CHAMBER SUMMONS NO.1432 OF 1997
IN
SUIT NO.1024 OF 1972

Lilavati Dharnidhar Shah
& Ors. ..Appellants
(Orig.Respondents
Nos.1(a) to 1(e)

Vs.

Himmatlal D. Mehta
& Ors. ..Respondents.

Mr.M.P.S.Rao with Mr.Hitiry D'Souza i/b.M/s.Pandya & Poonawala for the Appellants.

Mr.C.P. Deogirikar for Respondent Nos.1 to 5.

CORAM: DR.S.RADHAKRISHNAN AND S.J.VAZIFDAR, JJ.

DATED: 13TH MARCH, 2006

P.C. :

Heard learned counsel for the Appellants and the learned counsel for the Respondents. Respondent Nos.6 to 9 are not present.

2. By this Appeal, the Appellants are challenging the order dated 24th February, 1998 passed by the learned Single Judge in a Chamber Summons taken out by Respondent Nos.1 to 5 seeking correction in a certificate of sale issued under section 65 of Order

XXI Rule 94 of the Code of Civil Procedure, on 10.3.1978 by the Prothonotary and Senior Master of this Court wherein, the certificate indicates the individual name of D.K.Shah. However, it is the contention of Respondent Nos.1 to 5 that the said certificate of sale ought to have been issued in accordance with the Commissioner's certificate dated 14.2.1978, in the sense, it should be in the name of Shri D.K.Shah, Chief Promoter of the proposed Manish Co-operative Society. To put it in other words, the aforesaid Chamber Summons has been taken out to get the sale certificate dated 10.3.1978 corrected to be issued in the name of Shri D.K.Shah, Chief Promoter of the proposed Manish Co-operative Society.

3. We have perused the impugned order dated 24.2.1998. We have also perused the Court Commissioner's Report dated 19.1.1978 wherein the Court Commissioner has categorically stated "I therefore declare D.K.Shah, Chief Promoter of a proposed Society, as purchaser, subject to confirmation by the Court."

4. Similarly, we have also perused the Commissioner's certificate dated 14.2.1978 wherein the Commissioner has observed as under :

> "NOW THEREBY CERTIFY to this Honourable Court that at the aforesaid auction sale of the said property one Shri D.K. Shah, Chief Promoter of the proposed Manish Co-operative Society or his nominee or nominees being the highest bidder was declared to be the purchaser of the said property for Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand only) subject to the claim of the mortgages of the said property viz. The Bombay Mercantile Co-operative Bank Ltd., and also subject to confirmation of the same by this Honourable Court :"

5. We have also perused the order passed by the learned Single Judge dated 21.3.1978 in Chamber Summons No.36 of 1978 wherein the learned Single Judge has recorded as under :

> "P.C. Court Receiver to hand over possession of the property at Mira Gavthan, of which sale was confirmed on 10.3.1978 to the Auction purchaser, Mr. D.K. Shah the Chief Promoter of the proposed Manish Premises Co-operative Society Ltd."

6. We have also perused the certificate issued by the Prothonotary and Senior aster dated 10.3.1978 wherein, the last paragraph reads as under :

> "AND IT IS HEREBY LASTLY

> CERTIFIED that the said sale by Judge's Order dated, the 10th day of March, 1978, was duly confirmed by the Hon'ble Court in the name and favour of D.K. Shah as purchaser abovenamed."

7. A perusal of the aforesaid documents and orders, clearly indicates that in the auction sale, Mr.D.K. Shah appears to have participated as the Chief Promoter of the proposed society. The minutes of the Court Commissioner as well as the certificate of the Court Commissioner as well as the order of the learned Single Judge dated 21.3.1978, make it abundantly clear that D.K. Shah was acting as the Chief Promoter of the proposed Manish Co-operative Society.

8. Under these circumstances, we do not find any illegality or error in the order of the learned Single Judge granting the aforesaid Chamber Summons to the extent to correct the name and show the name of D.K.Shah, as the Chief Promoter of the proposed Manish Co-operative Society. In view thereof, the certificate issued by the Prothonotary and Senior Master on 10.3.1978 apparently is erroneous in the sense that the same was issued only in the name of D.K.Shah, which could not be sustained.

9. In the circumstances, there is no merit in the Appeal. Hence, the Appeal is dismissed, however with no order as to costs.

10. However, we make it clear that the contentions of the Appellants as well as the Respondents with regard to their respective claim of ownership as well as the extent of ownership, are expressly kept open, to be agitated in Suit No.330 of 1989 pending before the learned Civil Judge, Senior Division, Thane or in any other appropriate proceedings.

There shall be no order as to costs.

(DR.S.RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)